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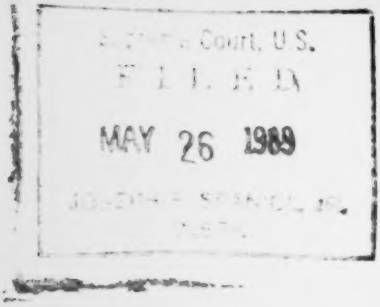

NO.

IN THE

Supreme Court of the United States

October Term, 1988

SIGNA DEVELOPMENT CORPORATION,
f/k/a SIGNA INVESTMENTS, INC.

Petitioner,

vs.

FAYETTE COUNTY, GEORGIA and
THE CITY OF FAYETTEVILLE, GEORGIA,

Respondents.

PETITION FOR A WRIT OF CERTIORARI

TO THE GEORGIA SUPREME COURT

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QUESTION PRESENTED

May a state legislature constitutionally enact legislation knowingly, intentionally and specifically tailored, drafted and designed to affect the property, property rights and interests of one and only one property owner within the state in an arbitrary manner different from all other property owners, without violating the fourteenth amendment guarantees of equal protection and due process?

TABLE OF CONTENTS

PAGE

QUESTIONS PRESENTED i

PARTIES TO THE PROCEEDINGS BELOW ii

TABLE OF CONTENTS iii

TABLE OF AUTHORITIES vi

OPINIONS BELOW 1

JURISDICTION 1

CONSTITUTIONAL PROVISION INVOLVED 2

GEORGIA STATUTES INVOLVED 3

STATEMENT OF THE CASE 6

REASONS FOR GRANTING THE

PETITION FOR WRIT OF CERTIORARI 11

I. THE GEORGIA SUPREME COURT FAILURE TO DECLARE 1988 GA. LAWS 1988, P. 4953 NO. 1330 UNCONSTITUTIONAL FAILS TO ADDRESS AND IS IN DIRECT CONFLICT WITH RULINGS OF THIS COURT AND OTHER FEDERAL COURTS IN ITS FAILURE TO APPLY THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION TO THE ACT OF THE GEORGIA LEGISLATURE. 11

A. THE CASE OFFERS THE COURT

THE OPPORTUNITY TO ENUNCIATE A CLEAR STANDARD FOR APPLICATION OF THE EQUAL PROTECTION CLAUSE TO LEGISLATIVE ENACTMENTS TAILORED BY THE LEGISLATIVE BODY TO AFFECT ONLY ONE INDIVIDUAL. 13

B. A SPECIFIC FINDING OF FACT THAT THE LEGISLATURE CREATED A CLASS OF ONE INDIVIDUAL PROPERTY OWNER WITH THE INTENT TO AFFECT ONLY THAT OWNER ADEQUATELY RAISES THE POSSIBILITY OF INTENTIONAL OR PURPOSEFUL DISCRIMINATION TO REQUIRE JUDICIAL INQUIRY INTO A POSSIBLE VIOLATION OF EQUAL PROTECTION.. 17

C. THE GEORGIA COURT'S FAILURE TO ADDRESS THE FOURTEENTH AMENDMENT EQUAL PROTECTION CLAIM AND OVERTURN THE CHALLENGED STATUTE PLACES THE GEORGIA COURT IN CONFLICT WITH THE DECISIONS OF THIS COURT AND OTHER FEDERAL AND STATE COURTS. 21

II. THE PRECEDENT OF ALLOWING A DUE PROCESS DEPRIVATION BY A LEGISLATURE WHICH IGNORES CONSTITUTIONAL PROHIBITIONS WHEN ENACTING STATUTES INTENDED TO AFFECT INDIVIDUAL CITIZENS SHOULD NOT

BE PERMITTED TO STAND. 23

CONCLUSION 27

APPENDIX

a. DECISION OF THE GEORGIA SUPREME COURT AND DENIAL OF MOTION FOR RECONSIDERATION . 1a

b. FAYETTE COUNTY SUPERIOR COURT-FINAL ORDER (trial court). 1b

c. EXCERPTS FROM COMPLAINT 1c

d. EXCERPTS FROM BRIEF OF PETITIONER ON APPEAL TO GEORGIA SUPREME COURT 1d

e. EXCERPTS FROM REPLY BRIEF OF PETITIONER ON PETITION FOR RECONSIDERATION TO GEORGIA SUPREME COURT 1e

TABLES OF AUTHORITIES

CASES	PAGE
American Party of Texas v. White, 415 U.S. 767 (1974)	17
Atchison, Topeka, & Santa Fe R.R. Co. v. Matthews, 174 U.S. 96 (1899)	19
City of New Orleans v. Dukes, 427 U.S. 297 (1976)	19
Clements v. Fashing, 457 U.S. 957 (1982)	17
Fletcher v. Peck, 10 U.S. (6 Cranch.) 87 (1810)	23, 25
Hillsborough v. Cromwell, 326 U.S. 620 (1946)	19
Maine Central R.R. Co. v. Brotherhood of Maintenance of Way Employees, 813 F.2d 484 (1st Cir. 1987)	20, 24
Nixon v. Administrator of General Services, 433 U.S. 425 (1977)	13
Ohio Bureau of Employment Services v. Hodory, 431 U.S. 471 (1977)	18
Personnel Administrator of Massachusetts v. Feeney, 442 U.S. 256 (1979)	15
Signa Development Corporation v. Fayette County, 259 Ga. 11, __ S.E.2d __ (1989)	10, 18, 26

Snowden v. Hughes, 321 U.S. 1 (1943) 18

South East Chicago Comm'n v. Department of Housing and Urban Development, 488 F2d 1119 (7th Cir. 1973) 23, 24

Stanton v. Stanton, 421 U.S. 7 (1975) 18

Trustees of Dartmouth College v. Woodward, 17 U.S. (4 Wheat.) 518 (1819) 23

CONSTITUTIONAL AND STATUTORY PROVISIONS AND RULES OF COURT

U. S. CONST. amend XIV Passim

28 U.S.C. § 1257 (a) 2

28 U.S.C. § 2403 (b) 2

SUP. CT. R. 21 (f) 5

SUP. CT. R. 28 (c) 2

O.C.G.A. § 36-36-2 3, 8, 25

1988 GA. Laws, p. 4953, No. 1330 4, 7, 11

OPINIONS BELOW

The opinion of the Supreme Court of the State of Georgia and the dissenting opinion of Justice Smith are reported as 259 Ga. 11, __ S.E.2d __ (1989). Petitioner's petition for reconsideration was denied by the Court without opinion on March 2, 1989, as reported in said case.

The trial court's decision on Petitioner's Complaint for Declaratory Judgment was entered on August 19, 1988. The trial court's decision is unreported, but is included, along with the opinion and order of the Georgia Supreme Court, in the Appendix.

JURISDICTION

The judgment of the Supreme Court of the State of Georgia was entered on February 2, 1989, and the order denying Petitioner's petition for reconsideration

was entered on March 2, 1989. This petition for Writ of Certiorari is filed within ninety days of the Georgia Supreme Court's denial of the petition for reconsideration. The jurisdiction of this Honorable Court is invoked under 28 U.S.C. § 1257(a). In accordance with 28 U.S.C. § 2403(b), this case involves constitutionality of an Act of the State of Georgia, and Petitioner's challenge thereto. In accordance with SUP CT R. 28(c), a copy of this petition has been served on the Attorney General of the State of Georgia.

CONSTITUTIONAL PROVISION INVOLVED

United States Constitution, Amendment 14, Section 1:

> All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of

life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

GEORGIA STATUTES INVOLVED

O.C.G.A. § 36-36-2 (in pertinent part)

(a) Authority is granted to the governing bodies of the several municipal corporations of this state to annex to the existing corporate limits thereof unincorporated areas contiguous to the existing corporate limits at the time of such annexation, upon the written and signed applications of all of the owners of all of the land, except the owners of any public street, road, highway, or right of way, proposed to be annexed, containing a complete description of the lands to be annexed. Lands to be annexed at any one time shall be treated as one body, regardless of the number of owners, and all parts shall be considered as adjoining the limits of the municipal corporation when any one part of the entire body abuts such limits. When such application is acted upon by the municipal authorities and the land is, by ordinance, annexed to the municipal corporation, a complete survey by a competent surveyor, not necessarily a county surveyor, shall be filed as a part of the ordinance annexing the territory and a copy, certified to by the clerk or similar official of the municipal corporation, shall be filed with the Secretary of State of this state. When so annexed, such lands

shall constitute a part of the lands within the corporate limits of the municipal corporation as completely and fully as if the limits had been marked and defined by special Act of the General Assembly.

1988 Ga. Laws p. 4953, No. 1330 (House Bill No. 1866).

AN ACT

To amend an Act providing a city charter for the City of Fayetteville in the County of Fayette, approved March 4, 1970 (Ga. L. 1970, p. 2243), as amended, so as to change the corporate limits for the city; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

Section 1. An Act providing a city charter for the City of Fayetteville in the County of Fayette, approved March 4, 1970, (Ga. L. 1970, p. 2243), as amended, is amended by adding immediately following Section 1.02 a new Section 1.025 to read as follows:

"Section 1.025. Notwithstanding any other provisions of law or any ordinance or resolution adopted by the governing authority of the City of Fayetteville, the following described property is deannexed from and is not a part of the corporate limits of the City of Fayetteville:

TRACT 1

All that tract or parcel of land lying and being in Land Lots 6, 7, 26, 27, 28 and 38 of the 7th District of Fayette County, Georgia, and being more particularly described as follows:[1]

. . . .

Section 2. All laws and parts of laws in conflict with this Act are repealed.

. . . .[2]

Notice of Intention To Introduce Local

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[1]The Act proceeds at this point to include six (6) full printed pages of metes and bounds legal descriptions taken originally from the petition of Petitioner to the City of Fayetteville, Georgia, for annexation and are not included here in accordance with SUP. CT. R. 21(f). As said metes and bounds descriptions are not pertinent to the decision as suggested by said Rule, they are not otherwise reproduced in this brief or the Appendix.

[2]The portion of the Act not here included is a copy of an affidavit of the publisher of the legal newspaper in Fayette County, Georgia and is deleted herein in accordance with SUP. CT. R. 21(f). The deleted portion is not "pertinent" to the decision as said rule would require to be included in the Appendix and is therefore not otherwise included in this brief.

Legislation[3/]

Notice is hereby given, pursuant to O.C.G.A. 28-1-14, that legislation will be introduced in the General Assembly of the State of Georgia at the 1988 session to deannex property annexed into the City limits of the City of Fayetteville by the Mayor and Council of the City of Fayetteville on November 2, 1987; and for other purposes.

This 17th day of February, 1988.

Paul W. Heard, Jr.
Representative
District 43

Approved April 7, 1988.

STATEMENT OF THE CASE

This action began as a complaint for declaratory judgment filed by Signa Development Corporation, a Texas corporation, asking the Superior Court of Fayette County, State of Georgia, to declare

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[3]The "Notice of Intention" included herein is a copy of an advertisement published prior to the introduction of the original act and becomes an official part of local legislation enacted into law.

1988, Ga. Laws, p. 4953, No. 1330, unconstitutional as being violative of the Constitution of the United States and the Georgia Constitution. Petitioner contended that the statute was knowingly, intentionally and specifically drafted, intended, and designed to affect only Petitioner, its property and property rights differently from all other property owners and citizens within the State of Georgia. Petitioner alleged in its original complaint (paragraph 21, 26 and 26(c)) that such action by the State violated both the equal protection clause and the due process clause of the fourteenth amendment to the United States Constitution. Excerpts of Petitioner's complaint raising the constitutional issues appear in the Appendix.

Trial was held and Petitioner presented

evidence and argued the federal constitutional issues at that time. On August 19, 1988, an order of the trial court, the Superior Court of Fayette County, State of Georgia, was filed denying Petitioner the requested relief. The trial court found that Petitioner's property was properly annexed to the City of Fayetteville, Georgia, pursuant to O.C.G.A. § 36-6-2 in a municipal ordinance simultaneously covering Petitioner's property and property of other persons. The court further found that the Petitioner's property was zoned and development permits were issued by the City, and the court found further that Petitioner had begun improvements on the property pursuant to those permits.

The trial court made a further finding of fact that a bill was subsequently

introduced in the Georgia General Assembly to deannex all property annexed by the particular ordinance under which Petitioner's property was annexed. Based upon evidence offered to prove Petitioner's constitutional claims, the court went on to find that the legislature amended the bill as introduced in order to remove or delete property of all owners other than Petitioner from coverage of the subsequent bill. The court then concluded as a matter of law that the property owned by the Petitioner had been annexed to the City of Fayetteville. The trial court found that the bill enacted into law, as amended to affect Petitioner's property, and only Petitioner's property, did not violate any of the constitutional provisions argued, without discussion, except to say "the Constitutional issues...are not meritorious".

On August 19, 1988, Petitioner filed its Notice of Appeal to the Supreme Court of the State of Georgia. Petitioner's brief argued the equal protection and due process claims, and the equal protection arguments were discussed at some length in oral argument before the Court. On February 2, 1989, Signa Development Corporation v. Fayette County, 259 Ga. 11, __ S.E.2d __ (1989) was decided and, without discussion of the constitutional issues, the Georgia Supreme Court ruled that the challenged statute was not unconstitutional. Justice Smith of the Georgia Supreme Court filed a dissent in the case, expressly addressing the fourteenth amendment claim and concluding "Legislation can be, as it is here, unconstitutional because it denies one party, Signa, equal protection." A Motion for Reconsideration was filed with the

Georgia Supreme Court, together with a brief in support thereof, which again raised the fourteenth amendment arguments and specifically asked the Court to address the issues. That motion was denied on March 2, 1989, without opinion. Excerpts of Petitioner's complaint and briefs on appeal and on application for reconsideration advancing the constitutional issues appear in the Appendix.

REASONS FOR GRANTING THE PETITION FOR WRIT OF CERTIORARI

I. THE GEORGIA SUPREME COURT FAILURE TO DECLARE 1988 GA. LAWS 1988, P. 4953 NO. 1330 UNCONSTITUTIONAL FAILS TO ADDRESS AND IS IN DIRECT CONFLICT WITH RULINGS OF THIS COURT AND OTHER FEDERAL COURTS IN ITS FAILURE TO APPLY THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION TO THE ACT OF THE GEORGIA LEGISLATURE.

This case presents the situation wherein the state court of last resort either failed to address (as suggested by its silence on the point) the specific

federal constitutional deficiencies of the statute with which it was presented or, as suggested by the dissent of Justice Smith, failed to apply the constitutional proscriptions of the fourteenth amendment's equal protection clause to the challenged statute which is neutral on its face. The significant question of federal law which this petition asks the Court to address is: May a state legislature constitutionally enact legislation knowingly, intentionally and specifically tailored, drafted and designed to affect the property, property rights and interests of one and only one property owner within the state in an arbitrary manner different from all other property owners, without violating the fourteenth amendment guarantees of equal protection?

A. THE CASE OFFERS THE COURT THE OPPORTUNITY TO ENUNCIATE A CLEAR STANDARD FOR APPLICATION OF THE EQUAL PROTECTION CLAUSE TO LEGISLATIVE ENACTMENTS TAILORED BY THE LEGISLATIVE

BODY TO AFFECT ONLY ONE INDIVIDUAL.

This case is extraordinary in its simplicity. With no stated rationale (and no rational basis) the legislature of the State of Georgia carved out Petitioner's real property (by metes and bounds) for special treatment.

A frequent "equal protection" issue before this Court has been the "underinclusive" class. This Court has made it clear that classifications inherently draw lines and distinctions, and mere underinclusiveness is not fatal to the validity of a statute under equal protection. See, e.g., Nixon v. Administrator of General Services, 433 U.S. 425, at 471 n. 33 (1977).

In contrast to a case of underinclusion, the case presented by Petitioner is clear and unburdened by

extraneous elements or considerations. It is uncontroverted that the Petitioner was a member of a group of similarly situated individuals. It is uncontroverted that the Petitioner was singled out from the group for special legislation designed solely to affect the property and the property rights, interests and status of Petitioner while the other members of the group were left unaffected. It is uncontroverted that the statute was drawn with exactitude to follow the arbitrary property lines of several property tracts purchased and owned by Petitioner, which property lines bore no other special relationship to any physical or natural property conditions. It is uncontroverted that the state legislation was intended to single out Petitioner and Petitioner's property.

This is not mere underinclusiveness.

This is not a case where an individual claims that a statute broad on its face is being applied unequally to the claimant or that the class should be enlarged. Although the Petitioner would fit within the classes composed of landowners, property developers, property developers seeking to bring more affordable housing to suburban areas, corporations formed in another state, or other groupings, this is not a statute which creates any such grouping. Indeed, this is not even a case where the general statement applies that equal protection is not violated "when there is no reason to infer antipathy." Personnel Administrator of Massachusetts v. Feeney, 442 U.S. 256, 272 (1979).

This case instead presents a definite statute clearly intended to affect the rights of one individual, a single corporate

entity and its property. The state courts failed to address the equal protection challenge in the case, with the exception of the dissent in the Georgia Supreme Court. The facts of the case are clear; the application of the fourteenth amendment to such a statute is not. In the rare and unique situation where a state legislative body intends to pass an act to single out one individual from all others within the state, how must the courts apply the rational basis test as defined by this Court? This case offers the Court the clear and unencumbered opportunity to define how the test is to be applied to protect the property and property rights of individuals and corporations.

B. A SPECIFIC FINDING OF FACT THAT THE LEGISLATURE CREATED A CLASS OF ONE INDIVIDUAL PROPERTY OWNER WITH THE INTENT TO AFFECT ONLY THAT OWNER ADEQUATELY RAISES THE POSSIBILITY OF INTENTIONAL OR PURPOSEFUL DISCRIMINATION TO REQUIRE JUDICIAL

INQUIRY INTO A POSSIBLE VIOLATION OF EQUAL PROTECTION.

The claimant raising a fourteenth amendment equal protection challenge is required to demonstrate discrimination against him of substance. Clements v. Fashing, 457 U.S. 957, 967 (1982); American Party of Texas v. White, 415 U.S. 767, at 781 (1974). The Georgia Supreme Court noted in its opinion that the statute had such a substantive effect. The law removed Petitioner's property from the jurisdiction which had permitted the development Petitioner had begun.

Admittedly, Petitioner was not named in the statute; the statute only described property affected, being Petitioner's real property and no other. However, where a statute is facially neutral, a claimant may show that it results in unequal application of the law in raising an equal protection

claim. Snowden v. Hughes, 321 U.S. 1, 8 (1943). After allowing for the inevitable lack of precision whenever classifications are created, a statute must nevertheless treat similarly situated persons similarly. See, e.g., Ohio Bureau of Employment Services v. Hodory, 431 U.S. 471 (1977); Stanton v. Stanton, 421 U.S. 7 (1975).

Petitioner has fully met these substantial burdens. The trial court, in its written order (See Appendix) found as a fact that the intent of the Georgia legislature in adopting a substitute measure for the bill as initially introduced was "to remove property of all owners other than Plaintiff from coverage of the Bill." Signa Development Corporation v. Fayette County, No. 88V-375 (Superior Court of Fayette County, Georgia, 1988) (Order, Finding of Fact 6). As long ago as 1899, this Court

addressed such a statute. "[T]he equal protection guaranteed by the Constitution forbids the legislature to select a person, natural or artificial, and impose upon him or it burdens and liabilities which are not cast upon others similarly situated." Atchison, Topeka, & Santa Fe R.R. Co. v. Matthews, 174 U.S. 96, 104 (1899). Where an individual person has been singled out by the legislature, an equal protection analysis is required, generally using (except with suspect classifications) a rational basis test to access its constitutional permissibility rather than some form of heightened scrutiny. See, e.g., City of New Orleans v. Dukes, 427 U.S. 297 (1976); Hillsborough v. Cromwell, 326 U.S. 620 (1946); Maine Central R.R. Co. v. Brotherhood of Maintenance of Way Employees, 813 F.2d 484 (1st Cir. 1987).

Petitioner sustained its burden in the trial court. The trial court determined that Petitioner was intentionally singled out from all other persons. Such action by the legislature would require, at a minimum, a showing that there was some rational basis for treating Petitioner differently from all similarly situated property owners. No such basis nor any purpose was articulated in the legislation. Neither did the State appear at trial or on appeal to argue any basis, rational or otherwise. Other than the dissenting justice, the Georgia Supreme Court simply decided that if there were statutory authority for the legislative action, constitutional challenges did not apply to the legislative enactment. Such an approach is simply inconsistent with the scrutiny demanded by the decisions of this Court and by the Constitution.

C. THE GEORGIA COURT'S FAILURE TO

ADDRESS THE FOURTEENTH AMENDMENT EQUAL PROTECTION CLAIM AND OVERTURN THE CHALLENGED STATUTE PLACES THE GEORGIA COURT IN CONFLICT WITH THE DECISIONS OF THIS COURT AND OTHER FEDERAL AND STATE COURTS.

If a statute fails to meet a rational relationship test, improperly treats persons similarly situated differently, results in invidious discrimination, or draws distinctions which are arbitrary or capricious, this Court and the courts of this nation have never hesitated to overturn the statute. In Petitioner's case, the state courts have failed to address the equal protection claims although they affirmatively found facts which logically would demand such an examination.

This Court has undertaken painstaking analysis to determine whether statutes before it violated equal protection both in cases where statutes have been upheld and where they have been overturned. It is only

in so doing that such statutes may be reasonably considered and future actions circumscribed for what is permissible within the framework of the United States Constitution and what is not. Left as it currently stands, the Georgia Supreme Court's decision leaves open the clear impression that the state legislature may, without constitutional limitations or restriction, target an individual citizen or corporation for special treatment so long as there is some statutory underpinning for its action. In this case, a dissenting Justice of the Georgia Supreme Court focused upon the Petitioner's equal protection claim; nonetheless, the court ignored the constitutional claim, without articulating any reason for rejection. Such is not the practice of this Court nor of the other

courts of this nation.[4/]

II. THE PRECEDENT OF ALLOWING A DUE PROCESS DEPRIVATION BY A LEGISLATURE WHICH IGNORES CONSTITUTIONAL PROHIBITIONS WHEN ENACTING STATUTES INTENDED TO AFFECT INDIVIDUAL CITIZENS SHOULD NOT BE PERMITTED TO STAND.

The principle that a legislature may not act so as to deprive one of due process imposes real limitations on its power. This principle prevents a legislature from passing acts which operate on prior legislative acts. Fletcher v. Peck, 10 U.S. (6 Cranch.) 87 (1810); South East Chicago Comm'n v. Department of Housing and Urban Development, 488 F.2d 1119 (7th Cir. 1973).

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[4] See, e.g., Trustees of Dartmouth College v. Woodward, 17 U.S. (4 Wheat.) 518 (1819), wherein Chief Justice Marshall set the following standard for constitutional scrutiny: "On the judges of this court, then, is imposed the high and solemn duty of protecting, from even legislative violation, those contracts which the constitution of our country has placed beyond legislative control; and, however irksome the task may be, this is a duty from which we dare not shrink." Id. at 625.

In addition, an act of a legislature may not operate to "divest rights which have come into concrete existence before its date of effect." South East Chicago Comm'n, Supra, at 1122.

When a legislative body seeks to affect a single individual's rights or property, it must be bound by the requirement of due process. In discussing such a statute in a slightly different context, the United States Court of Appeals for the First Circuit observed that "[a] statute aimed at specific individuals runs the risk of becoming an instrument that realigns particular parties' rights. . . .When [a legislative body] decides rights of specific persons, those rights are subject to 'the tyranny of a shifting majority.'" Maine Central R.R. Co. v. Brotherhood of Maintenance of Way Employees, 813 F.2d 484

(1st Cir. 1987) at 492.

Instances where this Court has overturned acts of state legislatures for deprivations of due process in such circumstances date back at least to Fletcher v. Peck. 10 U.S. (6 Cranch.) 87 (1810). The parallels between the acts of the Georgia legislature reviewed by Mr. Chief Justice Marshall in 1809 and the acts of that same body challenged by Petitioner in 1989 are remarkable.

In both cases, the legislature enacted a grant of authority. In the case of Petitioner, the legislature authorized the annexation of Petitioners property, pursuant to O.C.G.A. §36-36-2, and the property was fully, duly, properly, and actually annexed pursuant to that statutory grant. Subsequent to the annexation, the legislature decided it disapproved of the

results of its previous grant, and the act challenged by Petitioner was enacted to overturn the annexation, as to Petitioner and Petitioner's property only. While the legislature understandably has broad authority in creating municipalities, its actions in this area, as in all others, must be effected within the restrictions imposed by the United States Constitution. The annexation was overturned only after rights had vested in Petitioner, and Petitioner had begun to exercise and enjoy those rights. Even the majority of the Georgia Supreme Court recognized that the action of the legislature "vitiate[d]" the authority to develop under which Petitioner was acting. Signa Development Corp. v. Fayette County, 259 Ga. 11, __ S.E.2d __ (1989). With the rights having been vitiated by the state, a due process analysis is called for.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the Georgia Supreme Court.

Respectfully submitted,

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APPENDIX

GEORGIA SUPREME COURT

46260. SIGNA DEVELOPMENT CORP.
f/k/a SIGNA INVESTMENTS, INC.
v. FAYETTE COUNTY et al.

WELTNER, Justice.

Signa Development Corporation wished to develop its property, located in unincorporated Fayette County. Believing the county land use ordinances were too restrictive, Signa persuaded the City of Fayetteville to annex its property, and to grant to it the right to build on this property under a comprehensive development plan approved by the city. In 1988, before construction had begun on Signa's property, the General Assembly, acting under the authority of OCGA § 36-35-2 (a), changed the city limit of Fayetteville to exclude Signa's property. See Ga. L. 1988, pp. 4953-4960. The effect of this action by the General Assembly was to vitiate any authority of the city to permit development

of Signa's property. Signa filed a complaint for declaratory judgment seeking to have the 1988 Act held unconstitutional and void. The trial court denied relief.

1. OCGA § 36-35-2 (a) provides:

> No municipal corporation shall be incorporated, dissolved, merged, or consolidated with any other municipal corporation, or have its municipal boundaries changed except by local Act of the General Assembly or such methods as may be approved by general law.

2. In Troup County Electric Membership Corp. v. Georgia Power Co., 229 Ga. 348, 352 (4) (191 S.E.2d 33) (1972), we held: "[M]unicipalities are creatures of the legislature, and their existence may be established, altered, amended, enlarged or diminished, or utterly abolished by the legislature." See also City of Mountain View v. Clayton County, 242 Ga. 163, 166 (249 SE2d 541) (1978), where this language was quoted with approval.

Ga. L. 1988, pp. 4953-4960 is not unconstitutional for any of the reasons asserted by Signa.

Judgment affirmed. All the Justices concur, except Smith, J., who dissents .

SMITH, Justice, dissenting

Despite active opposition to the annexation of Signa's 908 acres and five other tracts of land totaling 835 acres, the City of Fayetteville annexed the approximately 1700 acres under the "100 % method," OCGA §§ 36-36-1 and 36-36-2, on November 2, 1987.

Signa was issued a permit in January, 1988 to begin the first phase of its development. Both city and county citizens continued to voice opposition to the annexation, and they requested their delegation to the General Assembly to introduce legislation to de-annex the

property.

Although approximately 1700 acres were annexed, the bill which ultimately de-annexed the property only de-annexed Signa's 908 acres. The other approximately 835 were left untouched.

The majority opinion is correct to a point, however; an act can be unconstitutional even though it is passed as a local act. There is nothing sacrosanct about legislation dealing with municipalities. Legislation can be, as it is here, unconstitutional because it denies one party, Signa, equal protection.

DECIDED FEBRUARY 2, 1989-
RECONSIDERATION DENIED MARCH 2, 1989.

Declaratory judgment; constitutional question. Fayette Superior Court. Before Judge Miller.

IN THE SUPERIOR COURT OF FAYETTE COUNTY
STATE OF GEORGIA

SIGNA DEVELOPMENT CORPORATION, f/k/a SIGNA INVESTMENTS, INC.,	)	
Plaintiff,	)	CIVIL ACTION
vs.	)	FILE NO. 88V-375
FAYETTE COUNTY, GEORGIA, and THE CITY OF FAYETTEVILLE, GEORGIA,	)	
Defendants.	)	

ORDER

This action under the Declaratory Judgment Act having been tried before the court without a jury, the Plaintiff having presented evidence by testimony and by documentary evidence, and the Defendant having moved, pursuant to § 41(b) of the Civil Practice Act, to dismiss after Plaintiff completed presentation of its evidence on the ground that upon the facts and the law Plaintiff has shown no right to

relief, the Court makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1.

Plaintiff, Signa Development Corporation, a Texas corporation, is the owner of 908 acres, more or less, within Fayette County.

2.

Defendant, The City of Fayetteville, is a municipal corporation located in Fayette County, Georgia.

3.

Defendant, The City of Fayetteville, owns and operates sewage treatment facilities for the benefit of property owners within the City. In November 1987, and currently, there existed no contract between the City of Fayetteville and Defendant, Fayette County, allowing the City

to provide sewer service to Plaintiff's property.

4.

On November 2, 1987, Plaintiff's land, together with several other tracts owned by others, was annexed into the City of Fayetteville by a duly passed ordinance, pursuant to O.C.G.A. § 36-6-2, the so-called "100% Method". At the same time, Plaintiff's land was re-zoned under appropriate City ordinances for Planned Development Project.

5.

Subsequently, in January 1988, Plaintiff was issued a Development Permit by the City covering a portion of the annexed property. Plaintiff began improvements pursuant to the approved plans and also began engineering on the off-site sewer line to avail itself of the sewer service

available to city property owners.

6.

In February 1988, Representative Paul Heard, introduced House Bill 1866, local legislation which sought to deannex all land annexed by the November 2, 1987, City of Fayetteville ordinance, which bill was passed by the House of Representatives. Senator Beverly L. Engram introduced a substitute to House Bill 1866 in the Senate, the intent of the substitution being to remove property of all owners other than Plaintiff from coverage of the Bill. The substitute to House Bill 1866 covering only Plaintiff's property was enacted by the Senate and the House on March 6, 1988, and approved by the Governor on April 7, 1988. Upon approval of the bill by the Governor, Plaintiff's property again became part of unincorporated Fayette County.

7.

Plaintiff has made no application to Fayette County since the date of the deannexation for issuance or approval of any building or development permits.

CONCLUSIONS OF LAW

1.

Since Plaintiff has made no application to Fayette County for building or development approvals since the date of the deannexation, there exists no case or controversy cognizable under the Declaratory Judgment Act.

2.

In the event this court has jurisdiction to make findings of law under the Declaratory Judgment Act, the Court makes the following additional conclusions of law:

(a) The City of Fayetteville was

authorized to and pursuant to general statutory provisions O.C.G.A. § 36-36-1 and § 36-36-2 (1982) annexed Plaintiff's property.

(b) Pursuant to O.C.G.A. § 36-35-2(a), the General Assembly of the State of Georgia has the authority to alter municipal boundaries by means of local legislation.

(c) The General Assembly may, by local legislation, deannex property from a municipality which has previously been annexed thereto pursuant to procedures established by statutory provisions of general application.

(d) The remaining constitutional issues raised by Plaintiff are not meritorious and offer no right to relief.

In consideration of the Findings of Fact and Conclusions of Law above stated, this Court concludes that the motion of

Defendant, Fayette County, should be granted.

It is therefore, ordered and adjudged that this action be dismissed pursuant to O.C.G.A. § 9-11-41(b) for failure of Plaintiff to show a right to relief and that judgment be entered in favor of defendant, against plaintiff.

This the 15 day of August, 1988.

/s/ Ben J. Miller
Judge, Superior Court
Griffin Judicial
Circuit

IN THE SUPERIOR COURT OF FAYETTE COUNTY
STATE OF GEORGIA

SIGNA DEVELOPMENT CORPORATION, f/k/a SIGNA INVESTMENTS, INC.,	)	
Plaintiff,	)	CIVIL ACTION
vs.	)	FILE NO. 88V-375
FAYETTE COUNTY, GEORGIA, and THE CITY OF FAYETTEVILLE, GEORGIA,	)	
Defendants.	)	

COMPLAINT

. . .

21.

Plaintiff alleges that House Bill 1866 (Ga. Laws 1988, P. _____) is unconstitutional under the Georgia Constitution, 1983, and the Constitution of the United States of America for reasons which are more fully set out below.

...26.

Plaintiff alleges that House Bill 1866 (Ga. Laws 1988, P. ____) is unconstitutional for the following reasons: ...(b) The Act is the rankest kind of discriminatory legislation. Its effect is to single out the lands of the Plaintiff not only from those of more than 17 property owners whose lands were all annexed by the City of Fayetteville between November 2, 1987, and the date of the legislative enactment, but also from all others in the State who have availed themselves of the 100% Method of Annexation prior to the Act. There is no rational reason for making the Plaintiff a class of one. The Act clearly violates the Equal Protection Clause of the Georgia Constitution, 1983, Article 1, Section 2, Paragraph 2 and the fourteenth amendment to the Constitution of the United States.

IN THE SUPREME COURT
STATE OF GEORGIA

SIGNA DEVELOPMENT CORPORATION, f/k/a SIGNA INVESTMENTS, INC.,	)	
Appellant,	)	Appeal No. 46260
vs.	)	
FAYETTE COUNTY, GEORGIA, and THE CITY OF FAYETTEVILLE, GEORGIA,	)	
Appellees.	)	

ON APPEAL TO THE SUPREME COURT FOR THE STATE OF GEORGIA

BRIEF OF APPELLANT

It is illogical to argue that specialized treatment prescribed for one identified member of a group constitutes equal protection for all members of the group. It is axiomatic that legislation must not violate the provisions of the Equal Protection Clauses of the United States or

Georgia Constitution. U.S. Const. amend. XIV; Ga. Const. Art. I, §1, ¶2. For purposes of the Equal Protection Clause, a corporation is a "person" within the meaning of that clause. Caldwell v. Hospital Authority of Charlton County, 248 Ga. 887, 287 S.E.2d 15 (1982). In order to determine if a violation exists in the case before the Court, the Court must examine the classification imposed by the Legislature in enacting the challenged Act. While Equal Protection does not remove from the Legislature the power to classify, see, e.g., 16A Am. Jur. 2d Constitutional Law §746, the power to classify is subject to limitations.

In the case at bar, the Legislature has created a class of one. All property involved in the legislation was and is owned by Signa. The original bill when introduced

set up a class of all property owners whose property was annexed by the City of Fayetteville on a certain date, while all property which was annexed by Fayetteville, or for that matter any other municipality, was excluded from the class. While the original class may have been suspect on its own, that class was changed by the Legislature prior to enactment in order to create a class of one owner. . . .

If a classification is to be upheld, it may not be capricious or arbitrary, and it must be reasonable and natural and have a natural basis in the light of its purpose or objective. 16A Am. Jur. 2d Constitutional Law §752; Cannon v. Ga. Farm Bureau Mut. Ins. Co., 240 Ga. 479 (1978); Nance v. Harrison, 176 Ga. 674 (1933). The classification created by the Legislature with the challenged bill does not pass that required

scrutiny. . . . This action sets up a class of one and intentionally treats this owner differently from all other similar owners; such action is far from equal. (As to the ability of the Court to find legislative intent from the journals of the General Assembly (T. 182-183 [P. Ex. 7 & 8]), see Sharpe v. Lowe, 214 Ga. 513 (1958).)

. . . In fact, in 1957, the United States Supreme Court considered whether Equal Protection arguments were applicable in just such a case. In the case of Morey v. Doud, 354 U.S. 457, 1 L.Ed.2d 1485, 77 S.Ct. 1344 (1957), (overruled on other grounds involving economic regulation of similar businesses by New Orleans v. Dukes, 427 U.S. 297, 49 L.Ed. 2d 511, 96 S.Ct. 2513 (1976)), the Court considered an Illinois statute that specifically exempted the American Express Company from a statute

applicable to all other parties in the same line of business. . . . In the portion of his opinion that was not overruled, Mr. Justice Burton pointed out that "Discriminations of an unusual character especially suggest careful consideration to determine whether they are obnoxious to the constitutional provision [requiring equal protection]." Id. at 464, 1 L.Ed.2d at 1490-91. . .

IN THE SUPREME COURT
STATE OF GEORGIA

SIGNA DEVELOPMENT CORPORATION, f/k/a SIGNA INVESTMENTS, INC.,	)	
Appellant,	)	Appeal No. 46260
vs.	)	
FAYETTE COUNTY, GEORGIA, and THE CITY OF FAYETTEVILLE, GEORGIA,	)	
Appellees.	)	

REPLY BRIEF OF APPELLANT
SIGNA DEVELOPMENT CORPORATION

. . . Signa suggests the separate local legislation (1988 Ga. Act No. 1330) was passed in violation of various Constitutional prohibitions.

At least since Fletcher v. Peck, 6 Cr. 87, 125, 3 L. Ed. 162, 174, 10 U.S. 87 (1810), where citizens such as Signa have been granted certain rights authorized by prior enactment of the Legislature, such a

grant can not be annulled, Constitutionally, by the Georgia Legislature, as here sought to be accomplished. . . .

. . . We contend, however, that absent consent or waiver of the party affected, the change or modification must be accomplished in a Constitutionally permissible manner and without prejudice to Constitutionally protected rights, privileges and interests. Georgia Ry. Co. v. Decatur, 262 U.S. 432, 67 L. Ed. 1065, 43 S. Ct. 613 (1923).

Supreme Court, U.S.
FILED
JUN 26 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. 88-1940 (2)

In The

Supreme Court of the United States

October Term, 1988

SIGNA DEVELOPMENT CORPORATION,
f/k/a SIGNA INVESTMENTS, INC.,

Petitioner,

vs.

FAYETTE COUNTY, GEORGIA and
THE CITY OF FAYETTEVILLE, GEORGIA,

Respondents.

On Petition For Writ Of Certiorari
To The Georgia Supreme Court

BRIEF IN OPPOSITION FOR THE RESPONDENT FAYETTE COUNTY, GEORGIA

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QUESTION PRESENTED

I.

Whether this Court should decline to grant a Writ of Certiorari to examine the Georgia Supreme Court's determination that the trial court correctly dismissed Petitioner's Complaint for Declaratory Judgment?

TABLE OF CONTENTS

Page(s)

QUESTION PRESENTED i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iii

STATEMENT OF THE CASE 1

STATEMENT OF FACTS 4

REASONS FOR NOT GRANTING THE WRIT 6

A. THE CONTROVERSY BEFORE THIS COURT DOES NOT INVOLVE A SUBSTANTIAL FEDERAL QUESTION WORTHY OF THIS COURT'S CONSIDERATION 6

B. THE RESPONDENT FAYETTE COUNTY, GEORGIA SHOWS THIS COURT THAT THE PETITIONER HAS FAILED TO STAY THE GEORGIA SUPREME COURT'S REMITTITUR OF THE CASE BACK TO THE TRIAL COURT 7

C. THE GEORGIA SUPREME COURT PROPERLY DETERMINED THAT THE ACT OF THE GENERAL ASSEMBLY DEANNEXING THE SUBJECT PROPERTY WAS A CONSTITUTIONAL EXERCISE OF AUTHORITY GRANTED PURSUANT TO OFFICIAL CODE OF GEORGIA ANNOTATED §36-35-2 8

D. THE GEORGIA LEGISLATURE'S ACT DEANNEXING THE SUBJECT PROPERTY IS RATIONALLY RELATED TO THE LEGITIMATE STATE PURPOSES SOUGHT TO BE ACHIEVED 10

CONCLUSION 12

TABLE OF AUTHORITIES

Page(s)

CASES CITED:

City of Mountain View v. Clayton County, 242 Ga. 163 (1978) 9

Craig v. Boren, 429 U.S. 190 12

Hughes v. Alexandria Scrap Corporation, 426 U.S. 794 12

Marshall v. Mayor and Board of Selectmen, 251 Miss. 750, 171 So. 2d 347, cert. denied 382 U.S. 836 9

New Orleans v. Dukes, 427 U.S. 297 12

Lee v. City of Jesup, 222 Ga. 530 (1966) 9

Schwieker v. Wilson, 450 U.S. 221 12

Trimble v. Gordan, 430 U.S. 762 12

Troup County Electric Membership Corporation v. Georgia Power Company, 229 Ga. 348 (1972) 9

STATUTES CITED:

Official Code of Georgia Annotated §36-35-2(a) .. 3, 8, 9

28 U.S.C. §2403(b) 8

RULES CITED:

Georgia Supreme Court Rule 61 7

Supreme Court Rule 17.1 7

Supreme Court Rule 22.3 8

Supreme Court Rule 28.4 8

No. 88-1940

In The

Supreme Court of the United States

October Term, 1988

SIGNA DEVELOPMENT CORPORATION,
f/k/a SIGNA INVESTMENTS, INC.

Petitioner,

vs.

FAYETTE COUNTY, GEORGIA and
THE CITY OF FAYETTEVILLE, GEORGIA

Respondents.

**On Petition For Writ Of Certiorari
To The Georgia Supreme Court**

BRIEF IN OPPOSITION FOR THE RESPONDENT FAYETTE COUNTY, GEORGIA

PART ONE

(i)

STATEMENT OF THE CASE

The Petitioner, Signa Development Corporation, f/k/a Signa Investments, Inc., sought to annex approximately 908 acres of land located in unincorporated Fayette County, Georgia into the City of Fayetteville, Georgia in order to develop its land as a planned unit

development. Signa's proposed City development would have yielded a higher density of dwellings than would have been permissible pursuant to County zoning regulations. Since Signa's tract was not contiguous to the existing boundaries of the City of Fayetteville, Signa approached four other landowners between its tract and the existing City boundary in order to create an 835 acre land bridge from the existing City boundary to Signa's property. None of the intermediate landowners had any present intention to develop their land.

The City of Fayetteville annexed Signa's property, along with the four other tracts, during November, 1987. Both during the annexation proceedings and subsequent thereto, citizens of both the City of Fayetteville and Fayette County opposed the Signa annexation on the basis that the development would unduly encroach upon a protected watershed area of the County and would allow development of the subject property with housing densities far in excess of the County comprehensive land use plan. After the land was annexed, the citizens of both the City of Fayetteville and Fayette County requested that their State Representatives introduce legislation to deannex the subject property based upon the concern that Signa's development might adversely affect the County's ability to protect its water supply. The District's two State Representatives subsequently initiated legislation which was passed by both houses of the Georgia General Assembly and signed by the Governor deannexing the property. While the tracts adjoining Signa's which were involved in the Fayetteville annexation were not deannexed, none of those tracts were slated for development

in the near future. Only Signa's tract threatened a violation of the watershed protection ordinance and County land use plan.

Following the deannexation of the subject property, Signa initiated an action in the Fayette Superior Court seeking a declaratory judgment that the General Assembly's Act deannexing the subject property was unconstitutional and void. During the pendency of the action, the parties entered into a temporary consent order prohibiting further development of the subject property pending the outcome of the litigation.

During the trial of the declaratory judgment action, the trial court granted Fayette County's motion to dismiss the case at the end of the Plaintiff's presentation of evidence. The trial court ruled that the Georgia General Assembly has the authority pursuant to Official Code of Georgia Annotated §36-35-2(a) to deannex property from a municipality. The trial court also ruled that since Signa had never made application to Fayette County for any building or development approvals with regard to its development, no actual case or controversy existed.

Signa appealed the trial court's ruling to the Georgia Supreme Court, which affirmed the trial court's decision. The Georgia Supreme Court stated that the Georgia Legislature had the authority pursuant to Official Code of Georgia Annotated §36-35-2(a) to deannex Signa's property. The Georgia Supreme Court also stated in its opinion that the Act deannexing the subject property is not unconstitutional for any of the reasons asserted by Signa. The Georgia Supreme Court subsequently denied Signa's

motion for reconsideration and Signa petitioned to this Court for a Writ of Certiorari.

(ii)

STATEMENT OF THE FACTS

Signa's petition for annexation of its 908 acre tract into the City of Fayetteville came at a time when Fayette County was experiencing severe water shortages due to the drought in recent years. The area's water supply had been inadequate to meet the needs of a rapidly developing rural county. Fayette County is situated approximately 20 miles south of Atlanta and has experienced phenomenal growth as a suburb of Atlanta.

Fayette County's growth, coupled with its inadequate water supply, had resulted in the State of Georgia's insistence that the County enact a watershed protection ordinance to protect the existing sources of water within the County. The watershed protection ordinance adopted by the County restricted the densities of development within watershed areas. Much of Signa's 908 acre tract lies within the protected watershed area. Notwithstanding the property's location, Signa sought to develop the property as a planned unit development with housing densities much higher than those permitted by the watershed ordinance. Signa's development was also in violation of the County's comprehensive land use plan which had been developed to control and apportion the growth which Fayette County was experiencing.

Since the City of Fayetteville permitted higher density developments, Signa approached the City concerning the annexation of its property. Since Signa's tract did not touch the existing City boundary, and in fact was not even near the city boundary, Signa found it necessary to approach four landowners with 835 acres of property situated between the City boundary and Signa's tract. None of these intervening landowners had intentions of developing their property in the near future. Despite public outcry from both citizens of the County and the City, the annexation occurred in November, 1987. The deannexation Act of the Georgia General Assembly was passed on February 17, 1988. Signa had not commenced development of the subject property pursuant to the annexation other than to begin engineering studies with regard to the area. The Signa property had been improved by the creation or improvement of an earthen dam, but this improvement was effectuated while the Signa tract remained in unincorporated Fayette County. The property had not been disturbed pursuant to the new planned unit development at the time the deannexation occurred. Moreover, Signa had entered into a consent order with Fayette County and the City of Fayetteville which enjoined further efforts to alter or improve the subject property pending the outcome of the declaratory judgment action.

Prior to the initiation of the declaratory judgment action, Signa had not approached the County with regard to the possibilities of developing its property pursuant to existing zoning classifications or pursuing rezoning efforts. Signa has had, and continues to have, the ability

to develop its property in accordance with County development requirements. The County does not prohibit development in watershed areas, but in accordance with State concerns, the County regulates the density of development in order to protect the region's water supply. The deannexation of the subject property does not prohibit Signa from developing its property, but merely reduces the housing densities thereon.

PART TWO

REASONS FOR DENYING THE WRIT

A. THE CONTROVERSY BEFORE THIS COURT DOES NOT INVOLVE A SUBSTANTIAL FEDERAL QUESTION WORTHY OF THIS COURT'S CONSIDERATION.

Respondent Fayette County, Georgia respectfully submits that the Georgia Supreme Court's decision which is the subject of this petition for writ of certiorari does not concern a substantial federal question. This case involves the Georgia Supreme Court's determination that a state deannexation statute is valid and enforceable. The controversy centers upon a real estate developer's attempt to annex certain property into a city in order to achieve greater densities of development than would have been permitted had the land remained in the unincorporated area of Fayette County. The considerations with regard to this case concern the State of Georgia's interest in protecting the watershed area within which the subject property is situated.

Pursuant to Supreme Court Rule 17.1, a review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons for such a review. A writ will be granted when a state court of last resort has decided a federal question in a manner in conflict with the decision of another state court of last resort or of a federal Court of Appeals. Respondent respectfully submits that this case does not present such a conflict. In addition, review will be considered when a state court has decided an important question of federal law which has not been, but should be settled by this Court, or has decided a federal question in a manner in conflict with the applicable decisions of this Court. Respondent Fayette County respectfully submits that these criteria have also not been met by the petitioner. Respondent Fayette County accordingly requests that Signa's petition for writ of certiorari be denied.

B. THE RESPONDENT FAYETTE COUNTY, GEORGIA SHOWS THIS COURT THAT THE PETITIONER HAS FAILED TO STAY THE GEORGIA SUPREME COURT'S REMITTITUR OF THE CASE BACK TO THE TRIAL COURT.

The Georgia Supreme Court has transmitted the remittitur to the trial court in accordance with its rules. Georgia Supreme Court Rule 61, concerning stay of remittiturs, provides as follows:

STAY OF REMITTITURS

> Any party desiring to have the remittitur stayed in this court in order to appeal or seek a writ of

> certiorari in the United States Supreme Court shall file in this court a motion to stay the remittitur with a concise statement of the issues to be raised on appeal or in the petition for writ of certiorari. Such notice shall be filed at the time of filing a motion for rehearing, or if no motion for rehearing is filed, within the time allowed for the filing of the same.

Respondent Fayette County respectfully submits that since the remittitur has been transferred by the Georgia Supreme Court back to the trial court, the Georgia Supreme Court does not possess documentation sufficient to permit a proper hearing of this petition for writ of certiorari. Respondent Fayette County accordingly objects to this petition for writ of certiorari pursuant to Supreme Court Rule 22.3.

Respondent Fayette County, Georgia further shows this Court that pursuant to Supreme Court Rule 28.4(c), since the constitutionality of a statute of the State of Georgia is drawn in question, the Georgia Attorney General should be served with the pleadings in this matter. Respondent Fayette County, Georgia shows that 28 U.S.C. §2403(b) may be applicable to this case.

C. THE GEORGIA SUPREME COURT PROPERLY DETERMINED THAT THE ACT OF THE GENERAL ASSEMBLY DEANNEXING THE SUBJECT PROPERTY WAS A CONSTITUTIONAL EXERCISE OF AUTHORITY GRANTED PURSUANT TO OFFICIAL CODE OF GEORGIA ANNOTATED §36-35-2.

Respondent Fayette County, Georgia shows this Court that the Act passed by the Georgia Legislature deannexing the Signa property is authorized pursuant to

Official Code of Georgia Annotated §36-35-2. The Legislature, through §36-35-2, reserves the authority to change municipal boundaries by local act of the General Assembly. Section 36-35-2 provides as follows:

> Incorporation, dissolution, merger, and boundary changes to be by local act or under general law; annexation of deannexed property.
>
> (a) No municipal corporation shall be incorporated, dissolved, merged, or consolidated with any other municipal corporation *or have its municipal boundaries changed* except by local act of the General Assembly or by such methods as may be provided by general law. (Emphasis supplied).
>
> (b) *Whenever any local act of the General Assembly deannexes property lying within the boundaries of a municipal corporation,* such property shall not be subject to annexation under Chapter 36 of this title for a period of five years from such deannexation. (Emphasis supplied).

The Supreme Court of Georgia has upheld the Legislature's right to alter municipal boundaries in the cases of *City of Mountain View v. Clayton County,* 242 Ga. 163 (1978); *Troup County Electric Membership Corporation v. Georgia Power Company,* 229 Ga. 348 (1972); and *Lee v. City of Jesup,* 222 Ga. 530 (1966). In these cases, the Georgia Supreme Court has held that municipalities are creatures of the Legislature, and their existence may be established, altered, amended, enlarged, diminished, or utterly abolished by the Legislature. Courts have long held that whether a proposed deannexation of municipal property is a wise step, and whether it supports the best, long-term interests of the municipality are not judicial questions, but issues for the governing authorities of that municipality, including the Legislature. *Marshall v. Mayor and*

Board of Selectmen, 251 Miss. 750, 171 So. 2d 347, cert. denied 382 U.S. 836. Case law illustrates that statutes providing for the detachment of land from municipal corporations have generally been upheld as against contentions that they were violative of procedural or substantive due process or were violative of the Equal Protection Clause of the United States Constitution. Respondent Fayette County respectfully submits that the Georgia Supreme Court ruled properly in affirming the trial court's dismissal of Petitioner's application for declaratory relief in light of the statutorily approved legislative action in this matter.

D. THE GEORGIA LEGISLATURE'S ACT DEANNEXING THE SUBJECT PROPERTY IS RATIONALLY RELATED TO THE LEGITIMATE STATE PURPOSES SOUGHT TO BE ACHIEVED.

Respondent Fayette County shows that the Georgia Legislature's Act deannexing the subject property is rationally related to the legitimate State purposes sought to be achieved by the Act. As previously noted, Fayette County enacted a watershed ordinance designed to preserve and improve the water quality in Fayette County and to comply with the laws of the State of Georgia. Although the County had such a watershed protection ordinance, the City of Fayetteville did not. The Legislature's Act deannexing Signa's property was a direct response to Signa's proposed development of land lying within a protected watershed area at densities far greater than those deemed appropriate by both the State of Georgia and Fayette County.

Fayette County is one of the fastest growing Counties in the nation. The phenomenal growth experienced by the County has resulted in increased water consumption, which has occurred at a time when the County has experienced a severe and prolonged drought. The citizens of both Fayette County and the City of Fayetteville were apprehensive that since Signa's property had been annexed into the City without a comprehensive development plan, and since the only development plan presented to the residents depicted housing densities far in excess of those densities required to adequately protect the County's water supply, the proposed Signa development might adversely affect the County's water supply and the County's ability to provide water resources for the residents and businesses moving into Fayette County. The General Assembly's Legislation deannexing the Signa property was rationally related to legitimate State purposes of protecting the County's water supply and comprehensive land use plan. Respondent Fayette County respectfully submits that the Georgia Supreme Court acted properly in expressly finding that the Act deannexing the Signa property is not unconstitutional for any of the reasons asserted by Signa.

This Court, in determining whether the Georgia Legislature's Act is violative of the Equal Protection Clause of the Fourteenth Amendment, must first determine the interest which the State claims to be protecting, and the Court must subsequently determine the measure of scrutiny to be applied to the statutory classification created. In this case, the interest sought to be protected is that of the citizens of the region as a whole in the conservation of the region's water resources and the improvement of

property lying within protected watershed areas. In this case, the classifications inherent in the Georgia Statute hinge on the distinction between those property owners not presently seeking to develop property within a watershed area, as opposed to Signa, which was the sole owner of annexed land scheduled for immediate development. Respondent Fayette County respectfully submits that the Georgia Legislature's Act deannexing Signa's property is an economic regulation, and such economic regulations have historically been invested with a presumption of constitutionality. *Trimble v. Gordan*, 430 U.S. 762. Distinctions drawn in the area of economic regulation must be rationally related to a conceivable legitimate state purpose. *New Orleans v. Dukes*, 427 U.S. 297. The Georgia Statute in the case at bar does not impinge upon a fundamental interest and does not create a suspect classification. Respondent Fayette County respectfully submits that although Georgia may have furthered its underlying purpose more artfully, more directly, or more completely, the statutory scheme chosen by the Georgia Legislature is not unconstitutional as applied. *Schweiker v. Wilson*, 450 U.S. 221. See also *Craig v. Boren*, 429 U.S. 190; *Hughes v. Alexandria Scrap Corp.*, 426 U.S. 794.

Based upon the aforecited authorities, Respondent Fayette County respectfully requests that this Court deny Signa's petition for a writ of certiorari.

CONCLUSION

The evidence presented at the trial of Petitioner's declaratory judgment action shows that of the five tracts

annexed into the City of Fayetteville on November, 1987, only Signa's tract was slated for development in the near future. The General Assembly's deannexation of Signa's tract was performed pursuant to Georgia statutory authority permitting the Legislature to alter municipal boundaries, and the Act was rationally related to legitimate State interests in protecting Fayette County's watershed areas and the comprehensive land use plan developed to control the growth of the County. Accordingly, the Georgia Supreme Court's decision upholding the trial court's dismissal of Petitioner's declaratory judgment action was proper, and Petitioner's application for writ of certiorari should be denied.

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